

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-11510-GAO

JIN-MING LIN and CHI-WAI CHAO,
on behalf of themselves and on behalf of all others similarly situated,
Plaintiffs,

v.

CHINATOWN RESTAURANT CORP., JOYCE P.Y. HAYES, and WILLIAM WAINRIGHT,
Defendants.

NOTICE
March 23, 2011

O'TOOLE, D.J.

Pursuant to the Judicial Conference's Guidelines on Citing to, Capturing, and Maintaining Internet Resources in Judicial Opinions, attached is the U.S. Department of Labor's Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Plastic Decision on Laws Enforced by the Wage and Hour Division, available at <http://www.dol.gov/whd/regs/compliance/whdfs48.htm>.

U.S. Department of Labor
Wage and Hour Division



Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Plastics decision on laws enforced by the Wage and Hour Division

On March 27, 2002, the U.S. Supreme Court ruled in **Hoffman Plastic Compounds, Inc. v. NLRB**, No. 00-1595 (S. Ct.), that the National Labor Relations Board (NLRB) lacked authority to order back pay to an undocumented worker who was laid off from his job because of union activities.

In **Hoffman Plastics**, the Supreme Court decided that providing back pay to the undocumented worker would conflict with policies under U.S. immigration laws. Those laws require employees to present documents establishing their identity and authorization to work at the time they are hired. An employer must check those documents and cannot knowingly hire someone who is not authorized to work. In **Hoffman Plastics**, the employee presented false documentation when he was hired. He was later laid off for trying to organize a union, in violation of the National Labor Relations Act (NLRA). The NLRB sought back pay for a period of time after the layoff. The Supreme Court concluded that back pay should not be awarded "for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud."

The Supreme Court's decision does not mean that undocumented workers do not have rights under other U.S. labor laws. In **Hoffman Plastics**, the Supreme Court interpreted only one law, the NLRA. The Department of Labor does not enforce that law. The Supreme Court did not address laws the Department of Labor enforces, such as the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), that provide core labor protections for vulnerable workers. The FLSA requires employers to pay covered employees a [minimum wage](#) and, in general, time and a half an employee's regular rate of pay for [overtime hours](#). The MSPA requires employers and farm labor contractors to pay the wages owed to migrant or seasonal agricultural workers when the payments are due.

The Department's Wage and Hour Division will continue to enforce the FLSA and MSPA without regard to whether an employee is documented or undocumented. Enforcement of these laws is distinguishable from ordering back pay under the NLRA. In **Hoffman Plastics**, the NLRB sought back pay for time an employee **would** have worked if he had not been illegally discharged, under a law that permitted but did not require back pay as a remedy. Under the FLSA or MSPA, the Department (or an employee) seeks back pay for hours an employee has **actually worked**, under laws that require payment for such work. The Supreme Court's concern with awarding back pay "for years of work not performed, for wages that could not lawfully have been earned," does not apply to work actually performed. Two federal courts already have adopted this approach. See **Flores v. Albertson's, Inc.**, 2002 WL 1163623 (C.D. Cal. 2002); **Liu v. Donna Karan International, Inc.**, 2002 WL 1300260 (S.D.N.Y. 2002).

The Department of Labor is still considering the effect of **Hoffman Plastics** on other labor laws it enforces, including those laws prohibiting retaliation for engaging in protected conduct.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243). Information about the [FLSA](#) and [MSPA](#) is also available on the Internet.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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Last Viewed by the Honorable George A. O'Toole, Jr., on March 23, 2011.